

1 [Clayton Street retaining wall license agreement]

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3 **Resolution approving a license agreement, including an assignment of claims,**  
4 **concerning the construction and maintenance of the Clayton Street retaining wall**  
5 **located adjacent to the Pemberton Steps and ratifying and directing certain actions in**  
6 **connection with this Resolution.**

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8 WHEREAS, During the heavy rainfall in San Francisco resulting from El Nino  
9 conditions during the winter of 1997-98, portions of the wall retaining the hillside along Clayton  
10 Street adjacent to the Pemberton Steps collapsed; and,

11 WHEREAS, Such wall collapse jeopardized the public health and safety and interfered  
12 with pedestrian and vehicle traffic on Clayton Street; and,

13 WHEREAS, In response to these conditions, the Board of Supervisors adopted  
14 Resolution No. 749-98, on file with the Clerk of the Board of Supervisors in File No. 98-1378.  
15 Said resolution, which is incorporated herein by reference, found and declared that a public  
16 emergency existed at Clayton Street and authorized the Director of the Department of Public  
17 Works to take necessary measures to protect the public safety, health, welfare, and property  
18 of San Francisco citizens from the dangerous conditions created by the retaining wall failure  
19 at Clayton Street; and,

20 WHEREAS, In said resolution, the Board of Supervisors requested the City Attorney  
21 and Department of Public Works seek to recover from the adjacent property owners, to the  
22 extent possible, the property owner's fair share of the expenses required to restore the  
23 retaining wall; and,

24 WHEREAS, After prolonged negotiations with the property owner adjacent to the  
25 Clayton Street and the Pemberton Steps and in light of the continuing danger presented by

1 the unrepaired wall and hillside in that area, the Department of Public Works determined that:  
2 1) the Department would reconstruct a segment of the Clayton Street retaining wall adjacent  
3 to the Pemberton Steps and 2) the abutting property owner at 111 Villa Terrace would  
4 assume liability and maintenance responsibility for the wall thereafter; and,

5 WHEREAS, The Department of Public Works recommends that the Board of  
6 Supervisors authorize the Department to enter into a license agreement with the property  
7 owner of 111 Villa Terrace that would recognize the rights and responsibilities of the  
8 Department and the property owner and would assign the Department's claims for  
9 construction liability to the property owner. Said recommendation is contained in DPW Order  
10 No. , which is on file with the Clerk of the Board of Supervisors in File No. ;  
11 and,

12 WHEREAS, Once the Department and 111 Villa Terrace property owner enter into the  
13 license agreement, a copy of which is on file with the Clerk of the Board in File No. ,  
14 the Department can initiate the project to reconstruct the retaining wall; now, therefore, be it

15 RESOLVED, That the Board, in recognition of the continuing danger posed by the  
16 unsafe conditions on Clayton Street, hereby approves DPW Order No. and  
17 authorizes execution of the Clayton Street retaining wall license agreement, including its  
18 assignment of claims, in substantially the same form as the agreement attached hereto; and,  
19 be it

20 FURTHER RESOLVED, That this Board hereby approves, confirms, and ratifies all  
21 actions heretofore taken by the officers of the City with respect to such license agreement and  
22 related to reconstruction of the Clayton Street retaining wall, and authorizes and directs the  
23 Directors of the Department of Public Works and the Department of Real Estate to take any  
24 and all actions which they or the City Attorney may deem necessary or advisable in order to  
25 effectuate the purpose and intent of this Resolution.